

REMARKS

Claims 1-6, 8-23, 25-43 and 51-58 are pending in the application. Claims 7, 24, 44-50 were previously canceled without prejudice. Claims 17, 39, 43, 52 and 56 are currently amended. The amendments do not present any new matter. Reconsideration and allowance of the application, as amended, are respectfully requested.

I. Withdrawn Rejections and Objections

Applicant kindly acknowledges that the rejection of claims under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2004/0126281 A1 to Morrison (“Morrison”) has been withdrawn, and that the rejection of claims under 35 U.S.C. §103(a) as allegedly being unpatentable over Morrison has been withdrawn.

Applicant further kindly acknowledges that the rejection of claims under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,635,403 to Bailey (“Bailey”) and the rejection of claims under 35 U.S.C. §103(a) as allegedly being unpatentable over Bailey has been withdrawn.

Applicant also kindly acknowledges that the rejection of claims 51-55 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Pub. No. US 2002/0045272 A1 to McDevitt *et al.* (“McDevitt”) has been withdrawn. Instead, these claims are currently rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over McDevitt and in view of Bailey.

Applicant also kindly acknowledges that the rejection of claim 56 under 35 U.S.C. §103(a) as allegedly being unpatentable over McDevitt has been withdrawn. Instead, this claim is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over McDevitt and in view of Bailey.

Applicant also kindly acknowledges that the rejection of claims 16 and 35 under 35 U.S.C. §103(a) as allegedly being unpatentable over Bailey has been withdrawn. Instead, these claims are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Bailey in view of U.S. Patent No. 5,935,426 to Giordano *et al.* (“Giordano”).

Applicant also kindly acknowledges that the claim objections of the March 9, 2007 Office Action have also been withdrawn, and that the rejection of claims 4 and 21 under 35 U.S.C. §112 ¶2 have also been withdrawn.

II. Claims 39-42 and 52-55 Satisfy §112 ¶2

Applicant respectfully submits that the rejection of claims 39-42 and 52-55 under 35 U.S.C. §112 ¶2 is moot.

It is stated in the final Office Action that “It is not clear how the claimed vial relates to the claimed invention because claim 39 does not positively recite that the claimed invention comprises a vial.” Final Office Action (p. 2). As noted in the Advisory Action, claim 39 as amended positively recites a vial. Advisory Action (p. 2).

Further, Applicant notes that simply because a claim may recite a sample does not render that claim indefinite, particularly considering that the preamble of independent claim 18 is directed to “a system for preparing a biological specimen sample” and claim limitations that refer to a sample do so to recite the context or environment to which embodiments apply.

It is also stated in the final Office Action that claims 52-55 do not positively recite that the claimed apparatus comprises the slide processor. Final Office Action (p. 3). Claim 52 is amended to recite that the filter is adapted for use with a slide processor to permit the slide processor to determine whether the filter was previously utilized based on the data in the data storage device, thereby rendering the rejection of claims 52-55 moot.

Accordingly, Applicant respectfully requests that the rejection of claims 39-42 and 52-55 under 35 U.S.C. §112 ¶2 be withdrawn.

III. Claims 1-6, 11, 12, 14, 15, 18-23, 29-31, 33, 34 and 36-42 Are Novel Over McDevitt

Independent claims 1 and 18 and respective dependent claims 2-6, 11, 12, 14, 15, 19-23, 29-31, 33, 34 and 36-42 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by McDevitt. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP §2131. Applicant respectfully traverses the rejection since McDevitt fails to anticipate any claim of the subject application and respectfully submits remarks in response to the final Office Action and the Advisory Action to demonstrate how McDevitt cannot support the rejection.

McDevitt fails to disclose, teach or suggest the combination of “a data storage device attached to or positioned within the container” and “wherein data related to the filter is stored in the data storage device” as recited in claims 1 and 18 and wherein such data related to the filter “can be retrieved from” the data storage device as recited in claim 18.

Initially, Applicant believes it would be helpful to clarify statements in the final Office Action regarding what Applicant allegedly states as being disclosed by McDevitt. It is stated in the

final Office Action that “As conceded by Applicant and disclosed in [0573] of McDevitt et al., the bar code can be used to identify the type of sensor array, including the type of test being conducted and the identity of the analyte filtered by the sensor array.” Final Office Action (p. 8). Applicant notes, however, that what was actually stated was that McDevitt describes using a barcode to “determine the identity of the sensor array, not a filter.” June 11, 2007 Amendment (p. 4).

Applicant’s remarks and characterization of McDevitt are consistent with what is actually described by McDevitt, which explains that “the reading device may be a bar code reader which is configured to read a bar code placed on the sensor array. In this manner the controller can read the bar code to determine the **identity of the sensor array** without any input from the user.” McDevitt (para. 573) (emphasis added). In other words, the bar code described by McDevitt is used **to determine whether the correct type of sensor is being utilized**. Consequently, McDevitt does not disclose, teach or suggest that the barcode on the sensor array is in any way related to a filter since, as described by McDevitt, the bar code is used for the specific purpose of identifying the sensor array, which is used to determine whether the correct sensor array is being used. In fact, paragraph 573 does not even refer to a filter. Thus, the basis of the rejection is not clear given these deficiencies.

It is alleged in the Advisory Action that “related to the filter” so broad that information identifying the sensor array is related to the filter. Advisory Action (p. 2). Applicant notes, however, that “related to a filter” nevertheless requires that the data actually be “related to the filter” and not a different component, i.e., a sensor array. Further, the deficiencies of McDevitt and the fact that the barcode described by McDevitt is not “related to a filter” as recited in Applicant’s claims is further demonstrated by the following aspects of McDevitt, which address allegations in the final Office Action and the Advisory Action: McDevitt does not disclose, teach or suggest that the information identifying the sensor array actually comprises the type of test being conducted and the identify of the sample; McDevitt acknowledges the differences between a filter and a sensor array and describes these components as different components having different functionality; and McDevitt describes specific manners of determining sample and sensor array data, which are not as alleged by the Examiner. Each of these points is discussed in turn in further detail below.

First, it is alleged in the Advisory Action that “McDevitt discloses that information identifying the sensor array comprises the type of test being conducted by the sensor array and the identity of the sample being collected, and that this information can be related by means of a bar code. This information is related to the filter because the identity of the analyte being analyzed or

the nature of the test being conducted often requires the use of a specific filter.” Advisory Action (p. 2) (emphasis added). It is respectfully submitted that various aspects of this allegation are not supported by McDevitt and mischaracterize what McDevitt actually describes.

Initially, it cannot be disputed that McDevitt actually describes a “barcode placed on the sensor array” such that “the controller can determine the identify of the sensor array ...” McDevitt (quoting para. 573). The Advisory Action thus alleges that the identity of the sensor array is a “type of test” being conducted, but nowhere does McDevitt actually describe this. Para. 548 of McDevitt explains that the type of sensor array cartridge used will depend on the type of testing being performed and refers to medical testing for diabetes and water testing, but McDevitt does not disclose, teach or suggest that the identify of the sensor array is a type of test being conducted, consistent with the understanding of persons of ordinary skill in the art. If the rejection stands, Applicant respectfully requests the Examiner to specifically identify, by paragraph and line number (and specific words thereof), where McDevitt describes what is alleged since Applicants are not able to identify such a description.

The Advisory Action further alleges a barcode that identifies a sensor array identifies the sample, but such is not the case. A type of component is not an identification of a sample, and nowhere does para. 573 actually describe what is alleged, consistent with the understanding of a person of ordinary skill in the art. Again, if the rejection stands, Applicant respectfully requests the Examiner to specifically identify, by paragraph and line number (and words thereof), where McDevitt describes what is alleged since Applicants are not able to identify such a description.

Second, it is further alleged that the sensor array identify information is related to the filter because the identity of the analyte being analyzed or the nature of the test being conducted often requires the use of a specific filter. Advisory Action (p. 2). However, McDevitt describes a filter and a sensor array as different components, in different contexts, and for performing different functions in different sections of the cited reference.

More specifically, para. 573 (relied upon to reject the claims) of McDevitt is related to a “Portable Sensor Array System.” Paras. 545-585 also describe various aspects of this system with reference to figures including FIG. 78 (reproduced below):

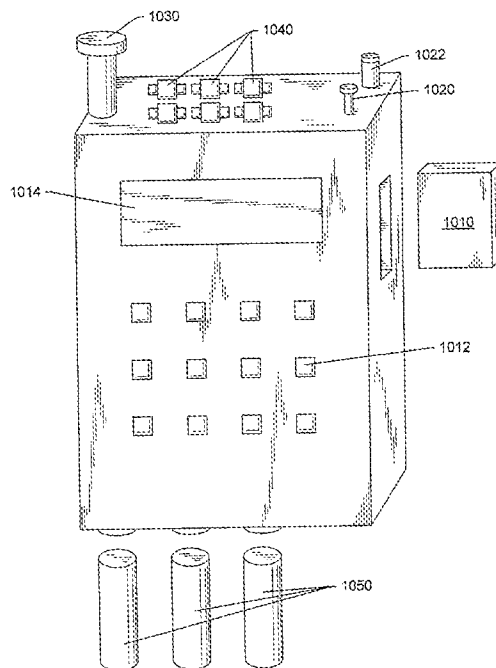


FIG. 78

Para. 547 explains “An embodiment of a portable sensor array system is depicted in FIG. 78” and that the system “includes a light source, a sensor array, and a detector.” McDevitt (para. 547). Applicant notes that para. 547 does not refer to a filter. Para. 548 explains that the flexibility of the system, with respect to the types of testing, may be achieved through the use of a sensor array cartridge 1010, which is inserted into the portable sensor array system prior to testing. Each cartridge includes a sensor array that includes a plurality of chemically sensitive particles, each of the particles including receptors specific for the desired task, e.g., medical testing for diabetes and water testing. Para. 548 also does not refer to a filter.

Para. 555 explains that “In some cases it may be necessary to **filter a sample prior to its introduction into the portable sensor array system**. For example, environmental samples may be filtered to **remove solid particles prior to their introduction into the portable sensor array system**. Commercially available nucleopore **filters 1040 anchored at the top of the unit may be used for this purpose**. In one embodiment, filters 1040 may have luer lock connections (either male or female) on both sides allowing them to be connected directly to an input port and a syringe.” McDevitt (para. 573) (emphasis added). Thus, as described by McDevitt (quoted above), the bar code on the sensor array is, as would be expected, related to the sensor array since it **identifies the sensor array, i.e., to determine whether the correct type of sensor is being**

utilized, and is not “related to a filter” as recited in Applicant’s claims since McDevitt describes a filter 1040 and a sensor array 1010 as different components that perform different functions.

It is further alleged in the Advisory Action that McDevitt discloses that it is the filter in the sensor array that is intended to filter the bodily fluids, not a separate filter that is distinct from the filter. Advisory Action (p. 2). However, as discussed above, and as shown in FIG. 78, the filter 1040 is indeed separate and independent of the sensor array cartridge 1010. McDevitt (FIG. 78, filter 1040 on top portion of sensor array system; sensor array cartridge 1010 inserted in side of system). Thus, Applicant’s statement is consistent with what is actually described by McDevitt. McDevitt explains that a filter can be incorporated “onto” a sensor array platform, and that a filter may also be attached “**to a sample input port** of a sensor array system, allowing filtration to take place as the sample is introduced into the sensor array. McDevitt (para. 464) (emphasis added). Thus, as described by McDevitt, a filter is not incorporated “into” a sensor array. In contrast, a filter is incorporated “onto” a platform or attached to a port (but not incorporated “in” a sensor array. As shown in FIG. 78 and described in para. 552 of McDevitt, “Fluid samples may be introduced into the system at **ports 1020 and 1022 at the top of the unit.** . . . One [port] 1022 may be for the introduction of liquids found in the environment and some bodily fluids (e.g., water, saliva, urine, etc.). The other port 1020 may be used for the delivery of human whole blood samples. Consequently, neither the port 1020 nor the port 1022 is “in the sensor array” cartridge as alleged by the Examiner, and the filters 1040, ports 1020 and 1022, and sensor array cartridge 1010 are separate and independent components that perform different functions.

Thus, consistent with what is actually described by McDevitt, and as would be naturally expected, the barcode on the sensor array is not related to a filter since it identifies the sensor array. Accordingly, Applicant respectfully submits that the allegations of prior Office Actions are inconsistent with what is actually described by McDevitt, which supports Applicant’s position and interpretation of McDevitt based on what is actually described as opposed to extending the cited reference into something it is not.

Third, it is alleged that McDevitt describes a substrate or sensor array having “a bar code for . . . relaying test protocols to a computer” but further deficiencies of the cited reference are evident from the description of how different types of data are acquired. In particular, paragraph 573 of McDevitt states that the controller will “require the identity of the sensor array [from the barcode] and the test being performed.” McDevitt (para. 573). The following sentences in paragraph 573 explain that “information **concerning the sample**” and “the **type of test being performed**” can be

input by a user. In contrast, “the **identity of the sensor array**” may be determined from a **barcode** on the sensor array. McDevitt (para. 573) (emphasis added). Thus, as actually described by McDevitt, information concerning the sample and the test being performed are acquired from a **different source** (i.e., a user) than the identity of the sensor array (acquired from the barcode).

Consequently, the allegation that paragraph 573 of McDevitt describes a substrate or sensor array having “a bar code for identifying the contents of the wells” is not accurate, and McDevitt fails to disclose, teach or suggest the combination of “a data storage device attached to or positioned within the container” and “wherein data related to the filter is stored in the data storage device” as recited in claims 1 and 18 and wherein such data related to the filter “can be retrieved from” the data storage device as recited in claim 18.

It is further alleged that “It appears from the disclosure that the bar code can be used to store the same exact information that can be input by the user.” Advisory Action (p. 2) (emphasis added). However, as discussed above, this is not accurate. Applicant cannot determine how such an inference can be made (particularly in view of the inherency requirements set forth in MPEP §2112), but nevertheless notes that McDevitt does not actually describe such a barcode or sensor array. Applicant, therefore, respectfully submits that the Examiner is interpreting McDevitt beyond what is allowed, and respectfully requests the Examiner to identify which sections by paragraph and line number (and specific words thereof) describe storing user-entered information into a barcode that is instead utilized to identify a sensor array.

Further, simply because an ADD may be coupled to a computer does not disclose, teach or suggest a data storage device attached to or positioned within the container, wherein data related to the filter is stored in the data storage device and can be retrieved there from by the processor through the communications interface, particularly considering that McDevitt actually explains that “information concerning the sample” and “the type of test being performed” are input **by a user**, whereas “the identity of the sensor array” may be determined from a barcode on the sensor array for purposes of determine whether the correct sensor array is being utilized. McDevitt (para. 573).

In view of these deficiencies and clarifying remarks, Applicant respectfully submits that independent claims 1 and 18 are novel over McDevitt. Dependent claims 2-6, 11, 12, 14, 15, 19-23, 29-31, 33, 34 and 36-42 incorporate the elements and limitations of respective independent claims 1 and 18 and, therefore, are also allowable. MPEP §2143.03.

Further, the deficiencies of McDevitt relative to dependent claims 2 and 19 are discussed above. McDevitt explains that “information concerning the sample” and “the type of test being performed” are input **by a user**, whereas “the identity of the sensor array” is determined from a different source, i.e., the barcode on the sensor array, to determine whether the correct type of sensor is being utilized. McDevitt (para. 573).

McDevitt also fails to disclose, teach or suggest claims 6 and 23, which recite *inter alia* “the data storage device comprising a read/write memory.” It is alleged that a barcode is the “data storage device,” however, it is well known that data may be read from a barcode, but a barcode is not a read/write device. If the rejection stands, Applicant respectfully requests the Examiner to explain how data can be written to a printed barcode as described by McDevitt and to submit evidence to that effect to support this allegation since it is contrary to the understanding of persons of ordinary skill in the art. Applicant notes that the Advisory Action does not address these deficiencies.

Moreover, McDevitt fails to disclose, teach or suggest “the stored data indicating a specimen that is compatible with the filter” as recited in claims 12 and 31. In contrast, the stored data identifies the sensor array, not a specimen. Paragraph 573 of McDevitt does not even refer to a filter or a specimen compatible with a filter.

McDevitt also fails to disclose, teach or suggest “the stored data indicating a test or a combination of tests that is compatible with the filter” as recited in claims 11 and 30, “the stored data indicating a number of processing steps involving the filter or the specimen” as recited in claims 14 and 33, and “the stored data indicating one or more parameters of processing steps involving the filter or the specimen” as recited in claims 15 and 34.

In contrast, as discussed above, McDevitt explains that information concerning “the type of test being performed” is input **by a user** and the barcode stores data for identifying a sensor array. McDevitt (para. 573) (emphasis added). As is well understood, a user is not a barcode. Further, it is alleged in the Advisory Action that “information identifying the test to be performed can be relayed to the controller by means of a barcode.” Advisory Action (p. 2). To support this allegation, the Advisory Action cites para. 573, but para. 573 does not actually describe what is alleged. Accordingly, to clarify the rejection, Applicant respectfully requests the Examiner to identify the specific sentence (and words thereof) of a specific paragraph relied upon to support this allegation, particularly considering that McDevitt actually explains something different. Thus, McDevitt once

again supports Applicant's position, and the Office Action allegations require expanding McDevitt to something into something it is not.

It is further alleged in the Advisory Action that "It is evident that the steps of the test are stored in the bar code." Applicant respectfully submits that this simply is not accurate since McDevitt actually describes something different, i.e., a barcode is used to identify the sensor array, not steps of a test. Again, Applicant respectfully requests the Examiner to identify the specific sentence (and words thereof) relied upon to support this allegation since McDevitt actually explains something different. McDevitt once again supports Applicant's position, and the Office Action allegation is based on expanding McDevitt into something it is not.

Further, it is conceded that McDevitt "does not explicitly disclose that the bar code disclosed by McDevitt et al. relays the number of steps involved in the test protocols . . ." Final Office Action (p. 4). It is generally alleged that "it is evident that the bar code relays this information." Final Office Action (p. 4). However, as discussed above, McDevitt explains that "the **identity of the sensor array**" may be determined from a **barcode** on the sensor array. McDevitt (para. 573) (emphasis added). Therefore, McDevitt does not support the allegation.

The final Office Action and Advisory action essentially rely on the allegation that it is **inherent** that the barcode described by McDevitt stores data of processing steps and a number of processing steps involving the filter or the specimen (and other types of data other than the identity of the sensor array). Applicant notes the following inherency standards that must be satisfied by the Office Action, but have not been satisfied.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP §2112, citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); MPEP §2163.07 (To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.) To establish inherency, **extrinsic evidence must make clear** that the missing descriptive matter is **necessarily present** in the thing described in the reference. Inherency, however, **may not be established by probabilities or possibilities**. The Examiner must provide a basis in fact and/or

technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." MPEP §2112 (emphasis added), citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). *See also, Akami Tech., Inc. v. Cable & Wireless Internet Services, Inc.*, 344 F.3d 1188 (Fed. Cir. 2003) (A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possible present).

In this case, the Examiner has provided to explanation that the subject matter of claims, including claims 11, 14, 15, 30, 33 and 34, are necessarily present in McDevitt. The Examiner has provided no extrinsic evidence to this effect. Accordingly, the "inherency" allegations, or allegations that it "appears" or is "evident" that the barcode is used to store different data, that are relied upon to reject dependent claims 11, 14, 15, 30, 33 and 34, cannot stand.

Moreover, it is alleged in the Advisory Action that "To set up the appropriate analysis conditions, one would have to know, for instance, how long the filter process takes, what is being filtered, and what means is being utilized to analyze the sample" and therefore, the "steps of the test are stored in the bar code." However, as discussed above, this is not what is actually described by McDevitt. Para. 572 of McDevitt explains that "The controller may prepare a sequence of instructions based on the type of analysis to be performed." McDevitt (para. 572). Thus, the controller can be programmed with certain steps to be performed and prepare instructions based on the type of analysis. Accordingly, Applicant respectfully submit that the Advisory Action allegation "the controller would not be able to set up the appropriate analysis conditions" is not accurate.

Claim 39 and claims 40-42, which depend directly or indirectly from claim 39, are also rejected as allegedly being anticipated by McDevitt. Claim 39 recites *inter alia* "a vial for holding the biological specimen sample, wherein the vial and the filter each includes a respective code." The Office Action, however, has not identified a vial and has not identified a vial and a filter, both of which include a code. In fact, McDevitt does not even refer to "vial." Applicant also notes that the Advisory Action states that claim 39 recites a vial, but does not otherwise explain how McDevitt is relevant to claim 39. Advisory Action (p. 2).

Accordingly, Applicant respectfully requests that the rejection of claims 1-6, 11, 12, 14, 15, 18-23, 29-31, 33, 34 and 36-42 under 35 U.S.C. §102(b) as allegedly being anticipated by McDevitt be withdrawn.

IV. Claims 16, 17, 35, 43, 57 and 58 Are Patentable Over McDevitt

Dependent claims 16, 17, 35, 43, 57 and 58 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over McDevitt. Dependent claims 16, 17, 35, 43, 57 and 58 incorporate the elements and limitations of respective independent claims 1 and 18 and, therefore, are also allowable in view of the deficiencies of McDevitt discussed above. MPEP §2143.03.

It is generally alleged that the system described by McDevitt processes blood samples and, therefore, that it would have been obvious to use a cytological filter. Applicant notes, however, that McDevitt explains that analysis of bodily fluids “will, typically, require a filtration of the material prior to analysis. For example, cellular material and proteins may need to be removed from the bodily fluids.” McDevitt (para. 464) (emphasis added). Accordingly, McDevitt does not disclose, teach or suggest a cytological filter for collecting and examining cells of the biological specimen as recited in claims 17, 43 and 56 since, as discussed above, cellular material is removed from bodily fluids that are analyzed and, therefore, would not be examined.

Moreover, given this specific use of a filter as described by McDevitt (i.e., to remove cellular material), the cited reference teaches away from claims 17, 43 and 56.

Additionally, McDevitt teaches away from a data storage device attached to or positioned within the container and “wherein data related to the filter is stored in the data storage device” as recited in claims 1 and 18 and wherein such data related to the filter “can be retrieved from” the data storage device as recited in claim 18 since the specific purpose of the bar code on the sensor array is to determine the identity of the sensor array for the purpose of determining whether the correct sensor array is being utilized. McDevitt (para. 573) (emphasis added).

Accordingly, Applicant respectfully requests that the rejection of claims 16, 17, 35, 43, 57 and 58 under 35 U.S.C. §103(a) be withdrawn.

V. Claims 8-10 and 25-28 Are Patentable Over McDevitt and Marsh

Dependent claims 8-10 and 25-28 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over McDevitt in view of U.S. Patent No. 5,219,294 to Marsh *et al.* (“Marsh”). Marsh is cited for the limited purpose of allegedly disclosing certain connectors and connector configurations. Accordingly, the cited references, individually and in combination, cannot support the rejection. MPEP §2143.03.

Further, the Office Action has not identified a data storage device (as recited in claims 1 and 18) that is within a recess of a container as recited in claims 8 and 25. Applicant notes that

claims 8 and 25 recite: 1. a container defining a recess; 2. a data storage device (that stores data related to a filter), and 3. that the data storage device is positioned in the recess. In other words, claims 8 and 25 do not merely recite a connector. Rather, claims 8 and 25 recite that the data storage device is positioned in a recess of a container. For example, Fig. 2B of the subject application illustrates a data storage device 130 that is positioned within a recess 134 of a filter tray 110.

It is generally alleged that it would be obvious to design an interface connection in view of the lap top - desk top connector described by Marsh. Marsh, however, does not disclose, teach or suggest, and is not related to, a data storage device that stores filter data. In this regard, Marsh is not analogous art.

More specifically, to rely on a reference under 35 U.S.C. §103(a), the reference must either 1. be in the field of Applicant's endeavor, or 2. be reasonably pertinent to the particular problem with which the inventor is concerned. MPEP §2141.01(a). A connector for interconnecting a lap top computer and a desk top computer is not in the field of endeavor of preparing biological specimens. Accordingly, Marsh must be reasonably pertinent to the particular problem with which the inventor is concerned, which it is not.

As discussed in the "Description of Related Art," Applicant describes, *e.g.*, improving systems that utilize cytological filters by verifying filter expiration, compatibility with specimens and availability of processing information and operating parameters utilizing a container defining a recess and a data storage device positioned in the recess. Marsh, in contrast, is not at all related to these unique cytology problems and associated configurations. In contrast, Marsh addresses a very different problem of providing a high density electrical connector between a lap top computer and a desk top computer. Marsh (col. 1, lines 9-11; 31-42). Consequently, Marsh is not analogous art for purposes of the rejection under §103(a).

Moreover, given the very different devices and applications described in McDevitt and Marsh, a person of ordinary skill in the art would not combine these unrelated references.

Additionally, McDevitt teaches away from a data storage device attached to or positioned within the container and "wherein data related to the filter is stored in the data storage device" as recited in claims 1 and 18 and wherein such data related to the filter "can be retrieved from" the data storage device as recited in claim 18 since the specific purpose of the bar code on the sensor array is to determine **the identity of the sensor array** for the purpose of determining whether the correct sensor array is being utilized. McDevitt (para. 573) (emphasis added).

Accordingly, Applicant respectfully requests that the rejection of claims 8-10 and 25-28 under 35 U.S.C. §103(a) be withdrawn.

VI. Claims 13 and 32 Are Patentable Over McDevitt and Giordano

Dependent claims 13 and 32 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over McDevitt in view of Giordano. Giordano is cited for the limited purpose of allegedly disclosing filter expiration data. Giordano, however, does not cure the deficiencies of McDevitt and has its own deficiencies. Accordingly, the cited references, individually and in combination, cannot support the rejection. MPEP §2143.03.

It is generally alleged that it would be obvious to add the expiration date of a filter to a data storage means of McDevitt. Final Office Action (p. 6). It is further alleged that “an expiration data for a filter can be applied to other filters.” Advisory Action (p. 2).

Giordano, however, is not analogous art. A meter system for a water treatment device is not in the field of Applicant’s endeavor of preparing biological specimens. Accordingly, Giordano must be reasonably pertinent to the particular problem with which the inventor is concerned, which it is not. As discussed in the “Description of Related Art,” Applicant describes, e.g., improving systems that utilize cytological filters by verifying filter expiration, compatibility with specimens and availability of processing information and operating parameters. Giordano, in contrast, is not at all related to these unique cytology problems. In contrast, Giordano addresses very different problems related to a water treatment device that is attached to a faucet. Giordano (col. 1, lines 45-55). Consequently, Giordano is not reasonably pertinent to the particular cytological problems addressed by embodiments and, therefore is not analogous art for purposes of the rejection under §103(a).

Moreover, given the very different devices and applications described in McDevitt (related to a filter for a faucet) and Giordano (related to a laptop connector), a person of ordinary skill in the art would not combine these unrelated references.

Additionally, McDevitt teaches away from a data storage device attached to or positioned within the container and “wherein data related to the filter is stored in the data storage device” as recited in claims 1 and 18 and wherein such data related to the filter “can be retrieved from” the data storage device as recited in claim 18 since the specific purpose of the bar code on the sensor array is to determine **the identity of the sensor array** for the purpose of determining whether the correct sensor array is being utilized. McDevitt (para. 573) (emphasis added).

Accordingly, Applicant respectfully requests that the rejection of claims 13 and 32 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

Applicant respectfully requests entry of this Amendment, and submits that doing so will place the application in condition for allowance in view of the forgoing amendments and remarks. If there are any remaining issues that can be resolved by telephone, Applicant invite the Examiner to kindly contact the undersigned at the number indicated below.

Respectfully submitted,

VISTA IP LAW GROUP LLP

Dated: November 19, 2007

By: / Gary D. Lueck /

Gary D. Lueck
Reg. No. 50,791
Attorneys for Applicant

12930 Saratoga Avenue, Suite D-2
Saratoga, California 95070
Telephone: (408) 777-2905
Facsimile: (408) 877-1662